

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

GEORGE KING,

Petitioner,

V.

ADMINISTRATOR STEPHEN JOHNSON, et al.,

Respondents.

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Civ. No. 16-1620 (PGS)

## OPINION

**PETER G. SHERIDAN, U.S.D.J.**

## I. INTRODUCTION

Petitioner is a state prisoner proceeding *pro se* with an amended petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Presently pending before this Court is Petitioner's motion for an extension of time to file an appeal. (*See* ECF 19). For the following reasons, Petitioner's motion is denied without prejudice.

## II. BACKGROUND

On March 31, 2020, this Court summarily dismissed Petitioner’s amended habeas petition as untimely. (*See* ECF 17 & 18). In a document dated June 22, 2020, Petitioner filed a motion for an extension of time to file an appeal of this summary dismissal as well as a notice of appeal. (*See* ECF 19 & 20). Petitioner asserts his movement within the prison has been severally limited due to the COVID-19 pandemic. (*See* ECF 19-2 at 1-2). This has caused him to have limited access to the law library which affected his ability to file a notice of appeal. (*See id.*) To date, Petitioner has not paid the notice of appeal filing fee nor has he applied to proceed *in forma pauperis* on appeal.<sup>1</sup>

<sup>1</sup> Petitioner paid the \$5.00 filing fee in this Court.

### III. DISCUSSION

Generally, a petitioner must file his notice of appeal within thirty (30) days from the entry of the order. *See* Fed. R. App. P. 4(a)(1)(A). However, Federal Rule of Appellate Procedure 4(a)(5)(A) permits a district court to extend the time to file a notice of appeal if: “(i) the party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.” In this case, however, Petitioner is not entitled to relief under Federal Rule of Appellate Procedure 4(a)(5)(A) because his motion for an extension of time was filed on June 22, 2020<sup>2</sup>, beyond thirty days after his time to appeal had expired.

Federal Rule of Appellate Procedure 4(a)(6) also provides a mechanism for the granting of an extension of time to file a notice of appeal. Rule 4(a)(6) provides:

The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

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<sup>2</sup> This Court deems Petitioner’s motion for an extension of time to file an appeal filed on June 22, 2020 pursuant to the prisoner mailbox rule. *See Houston v. Lack*, 487 U.S. 266, 270–71 (1988); *see also Maples v. Warren*, No. 12–0993, 2012 WL 1344828, at \*1 n.2 (D.N.J. Apr. 16, 2012) (“Often times, when the court is unable to determine the exact date that a petitioner handed his petition to prison officials for mailing, it will look to the signed and dated certification of the petition.”).

(C) the court finds that no party would be prejudiced.

Fed R. App. P. 4(a)(6).

Petitioner does not state that he did not receive notice of this Court's March 31, 2020 order within twenty-one days after it was entered. Accordingly, Petitioner fails to show he is entitled to relief under Federal Rule of Appellate Procedure 4(a)(6) as well. Nevertheless, out of an abundance of caution, Petitioner's motion for an extension of time is denied without prejudice in the event Petitioner can show he is entitled to relief under Appellate Rule 4(a)(6) in any subsequent motion Petitioner may elect to file.

#### **IV. CONCLUSION**

For the foregoing reasons, Petitioner's motion for an extension of time to file an appeal is denied without prejudice. An appropriate order will be entered.

DATED: July 10, 2020

*s/Peter G. Sheridan*  
PETER G. SHERIDAN, U.S.D.J.